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§ 325.5 Death of employee.

If an employee dies before filing one or more of the required forms, the form or forms may be filed by or in behalf of the person or persons to whom benefits would be payable pursuant to section 2(g) of the Act. Such form or forms shall be filed within the time prescribed in § 325.3. Under these circumstances, the word “employee”, as used in this part, shall include the individual or individuals by or in behalf of whom the form is filed.

§ 325.6 Verification procedures.

The Board’s procedures for adjudicating and processing applications and claims for unemployment benefits filed pursuant to this part will include both pre-payment and post-payment procedures for verifying the validity of such applications and claims. Such procedures shall be designed with a view to obtaining substantial evidence as to the days of unemployment of the employees who register in accordance with this part. The verification procedures shall include, but are not limited to:

(a) Pre-payment contacts with railroad employers, utilizing data processing techniques to the extent feasible so as not to delay unduly the payment of valid claims; and

(b) Computer matching programs with state agencies or other entities that may have relevant data concerning non-railroad employment and benefit payments under state unemployment compensation laws.

PART 327—AVAILABLE FOR WORK

Sec.

327.1 Introduction.

327.5 Meaning of “available for work”.

327.10 Consideration of availability.

327.15 Reasonable efforts to obtain work.

AUTHORITY: 45 U.S.C. 362(i), 362(l).

§ 327.1 Introduction.

The Railroad Unemployment Insurance Act provides for the payment of unemployment benefits to qualified railroad employees for days of unemployment. Under section 1(k) of the Act, an unemployed employee must be “available for work” as a condition of

eligibility for unemployment benefits for any day claimed as a day of unemployment. This part defines the phrase “available for work” and explains how the Board will apply that phrase to claims for unemployment benefits.

[55 FR 1811, Jan. 19, 1990]

§ 327.5 Meaning of “available for work”.

(a) *General definition.* A claimant for unemployment benefits is available for work if he is willing and ready to work.

(b) *Willing to work.* A claimant is willing to work if he is willing to accept and perform for hire such work as is reasonably appropriate to his circumstances in view of factors such as:

(1) The current practices recognized by management and labor with respect to such work;

(2) The degree of risk involved to the claimant’s health, safety, and morals;

(3) His physical fitness and prior training;

(4) His experience and prior earnings;

(5) His length of unemployment and prospects for obtaining work; and

(6) The distance of the work from his residence and from his most recent work.

(c) *Ready to work.* A claimant is ready to work if he:

(1) Is in a position to receive notice of work which he is willing to accept and perform, and

(2) Is prepared to be present with the customary equipment at the location of such work within the time usually allotted.

[Board Order 53-296, 18 FR 8157, Dec. 12, 1953]

§ 327.10 Consideration of availability.

(a) *Initial proof.* A claimant who registers for unemployment benefits in accordance with the provisions of part 325 of this chapter shall, absent any evidence to the contrary, initially be considered available for work. Evidence that a claimant may not be available for work shall include any evidence provided by the claimant’s base year employer(s) pursuant to section 5(b) of the Railroad Unemployment Insurance Act.

(b) *Information indicating unavailability.* If the office of the Board which is adjudicating a claimant’s claims for

benefits receives information indicating that the claimant may not be available for work, he shall be required to submit evidence of his availability for work, and no benefits shall thereafter be paid with respect to any day in the period of the claimant's unemployment unless sufficient evidence of the claimant's availability for work on such day is presented.

(c) *Employee who has retired voluntarily.* An employee who has retired voluntarily shall be presumed not to be eligible for unemployment benefits. An employee shall be regarded as having retired voluntarily if his not being in the active service of his employer is due to an agreement between his labor organization and his employer requiring retirement upon attaining a certain age.

(d) *Equivalent of full-time work.* (1) A claimant who is continuously employed from week to week under a work schedule that provides the equivalent of full-time employment shall not be considered available for work with respect to any rest day or other non-work day within a 14-day registration period.

(2) The application of paragraph (d) may be illustrated by the following examples:

Example (1): A claimant's regular work schedule requires him or her to work five nine-hour days one week followed by three nine-hour days and one eight-hour day in the next week. The claimant has five non-work days within this two-week period. The claimant is not considered available for work on those non-work days.

Example (2): On Monday an employee who has been working a shift which has Saturdays and Sundays off changes to a shift which normally has Wednesdays and Thursdays off. As a consequence, the employee has six non-work days within a 14-day period. The employee is not considered available for work with respect to any of the six non-work days.

Example (3): An employee regularly receives remuneration for 40 hours per week by working 10 hours on each of four days per week, thus giving him or her six rest days in a 14-day period. The employee will not be considered available for work on the rest days.

(e) *Attendance in school or training course.* (1) A claimant who has voluntarily left work to enroll as a student in an educational institution shall be

presumed not to be available for work. For the purpose of this provision, leaving work is considered voluntary when the claimant on his or her own initiative left work that he or she could have continued to perform but for the claimant's decision to attend school. In all other cases, this presumption shall not apply, but eligibility shall instead be determined on the basis of the facts of each case. In each such case, the claimant shall be given an opportunity to establish that he or she remains ready and willing to engage in full-time employment for hire, notwithstanding his or her school attendance. If a claimant is enrolled in a vocational training program at a trade or technical school, he or she shall be considered available for work if his or her current prospects for work are poor and the vocational training can reasonably be expected to increase his or her prospects for obtaining new employment.

(2) *Examples.* The application of paragraph (e) may be illustrated by the following examples:

Example (1): An individual is laid off by his or her railroad employer. Instead of looking for other employment, the individual decides to enter college in order to become a teacher. He or she is enrolled as a full-time day student. The individual is not available for work.

Example (2): An employee is furloughed by his or her railroad employer and will not likely be able to return to railroad work. After making a reasonable effort to obtain work and finding none, the individual enrolls in a six-month course of training, which upon completion would permit him or her to obtain an entry level job in the data processing industry. The individual is considered available for work while training for the data processing job.

(f) *Failure to work in anticipation of maximum mileage.* (1) An employee in train and engine service who voluntarily lays off work in anticipation of reaching the maximum mileage or earnings permitted under an agreement with his or her employer shall not be considered available for work.

(2) *Example.* Halfway through the month an engineer has worked in train service covering 2,000 miles. By agreement with his or her employer he or she may not operate a train in excess of 3,000 miles per month. In order to allow engineers with less seniority to

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perform service, the engineer lays off work for five days. The engineer is not considered available for work on those days.

(g) *Confinement.* A claimant who is confined in a penal institution or is in the custody of a Federal, State or local governmental unit or official thereof shall not be considered available for work. An individual shall not be considered in the custody of a governmental unit or official thereof if he or she has been released on bail and is awaiting trial or he or she has been placed on probation or parole. However, an individual who has been released from custody by a governmental unit or official thereof under a program that permits leave from custody of a short duration, after which he or she must return to custody, shall not be considered available for work on those days on which he or she is on furlough from confinement.

(h) *Missed turns in pool service.* A train and engine service employee assigned to pool service shall not be considered as ready to work, within the meaning of § 327.5(c) of this part, with respect to any day on which such employee would have worked if he or she had not missed his or her turn in pool service employment.

[Board Order 53-296, 18 FR 8157, Dec. 12, 1953, as amended by Board Order 55-30, 20 FR 1015, Feb. 17, 1955; 55 FR 1811, Jan. 19, 1990]

§ 327.15 Reasonable efforts to obtain work.

(a) *Requirement.* A claimant may be required at any time to show, as evidence of willingness to work, that he is making reasonable efforts to obtain work which he professes to be willing to accept and perform, unless he has good prospects of obtaining such work or his circumstances are such that any efforts to obtain work other than by making application for employment service pursuant to § 325.3 of this chapter would be fruitless to the claimant.

(b) *Failure to comply with requirement.* When the office of the Board which is adjudicating claims for benefits has information that the claimant has failed to comply with the requirements set forth in paragraph (a) of this section, no benefits shall be paid with respect to any days in the period of the claim-

ant's unemployment unless sufficient evidence of the claimant's availability for work on such days is presented.

(c) “*What constitutes reasonable efforts.*” A claimant shall be considered as making reasonable efforts to obtain work when he takes such steps toward obtaining work as are appropriate to his circumstances. In determining what steps are appropriate to a claimant's circumstances, consideration shall be given to actions such as:

(1) Registering with a union hiring or placement facility;

(2) Applying for employment with former employers;

(3) Making application with employers including individuals and companies not covered by the act, who may reasonably be expected to have openings in work suitable for him;

(4) Responding to appropriate “want ads” for work which appears suitable for him;

(5) Actively prosecuting his claim for reinstatement in his former work;

(6) Any other action reasonably directed toward obtaining work.

[Board Order 53-296, 18 FR 8157, Dec. 12, 1953, as amended at 55 FR 1812, Jan. 19, 1990]

PART 330—DETERMINATION OF DAILY BENEFIT RATES

Sec.

330.1 Introduction.

330.2 Computation of daily benefit rate.

330.3 Daily rate of compensation.

330.4 Last railroad employment in the base year.

330.5 Procedure for obtaining and using information about daily rate of compensation.

AUTHORITY: 45 U.S.C. 362(1).

SOURCE: 56 FR 28702, June 24, 1991, unless otherwise noted.

§ 330.1 Introduction.

The Railroad Unemployment Insurance Act provides for the payment of benefits, at a specified daily benefit rate, to any qualified employee for his or her days of unemployment or days of sickness, subject to a maximum amount per day. The “daily benefit rate” for an employee is the amount of benefits that he or she may receive for each compensable day of unemployment or sickness in any registration